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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re ExpoSystems, Inc.

Serial No. 75/240,156

Martin G. Linihan of Hodgson, Russ, Andrews, Woods & Goodyear, LLP for ExpoSystems, Inc.

Nicholas K. D. Altree, Trademark Examining Attorney, Law Office 109 (Ronald Sussman, Managing Attorney).

Before Cissel, Hohein and Chapman, Administrative Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

ExpoSystems, Inc. has filed an application to register the mark shown below

for "portable modular displays for use in exhibitions and trade shows."[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used on or in connection with its specified goods, would so resemble the mark EXPO DISPLAY SERVICE, which is registered for "portable, plug-together and collapsible exhibition, display and decorative systems comprised of...(the component parts are listed)...all sold as a unit,"[2] as to be likely to cause confusion, or to cause mistake, or to deceive.

Additionally, registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark, if used on or in connection with portable modular displays for use in exhibitions and trade shows, is merely descriptive of its goods.

Applicant has appealed. Both applicant and the Examining Attorney have briefed the issues before us. An oral hearing was not requested.

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[1] Application Serial No. 75/240,156, filed February 11, 1997. The application is based on applicant's assertion of a bona fide intention to use the mark in commerce.

[2] Registration No. 1,871,922, issued January 3, 1995. The claimed date of first use is June 30, 1992. Registrant disclaimed the terms "expo display."

We turn first to the refusal to register under Section 2(e)(1) of the Trademark Act. In support of the refusal, the Examining Attorney has made of record printouts of

portions of 18 articles from the Nexis computerized data base showing use of the term "expo" as a commonly used word for exhibitions, trade shows and/or expositions.[3] Some examples of these uses (with emphasis added) are given below:

> "And based on a sampling of programmers who attended last week's Java Internet Business **Expo**, a **trade show** at New York's Jarvis Center that was co-sponsored by IBM..." Austin American-Statesman, September 8, 1997;
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> "The North Texas Commercial Association of Realtors is holding its annual Commercial Real Estate **Expo** on Sept. 8 Monday. The afternoon **exhibition** will showcase local real estate projects and companies." The Dallas Morning News, September 5, 1997;
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> "Pursuit of the next hot franchise begins today in Los Angeles with the West Coast debut of the International Franchise **Expo**. Billed as the world's largest franchise **trade show**,...
> Organizers of a competing West Coast franchise **expo**—the American Franchise **Exhibition**—say the real reason the IFE headed West..." Los Angeles Times, September 5, 1997;
>
> "The largest single-species livestock **exhibition and trade show** in the world, the **expo** is held on the second weekend after Memorial Day..." The Des Moines Register, August 2, 1997; and
>
> "The **expo**, a **trade show** that featured 40 seminars a day about safety procedures, training and other topics, began Thursday." The Baltimore Sun, July 28, 1997.

The Examining Attorney also relies upon the definition

[3] The Examining Attorney noted that the Nexis search covered the last three months only, and that there were 273 stories, but only representative samples were submitted.

of "display" appearing in the Random House Compact Unabridged Dictionary (1996). Although not specified by the Examining Attorney (other than a "noun" definition), the Board presumes that the specific definition relied on was number 11, which reads as follows: "11. an arrangement, as of merchandise, art objects or flowers, designed to please the eye, attract buyers, etc."

A mark is merely descriptive if, as used on or in connection with the goods or services in question, it immediately conveys information about an ingredient, quality, characteristic, feature, etc. thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services in connection with which it is used, or intended to be used. See In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978); In re Eden Foods Inc., 24 USPQ2d 1757 (TTAB 1992); and In re Bright-Crest, Ltd., 204 USPQ 591 (TTAB 1979). Further, the question of whether a mark is merely descriptive must be determined not in the abstract, that is, not by asking whether one can guess, from the mark itself, considered in a vacuum, what the goods or services are, but rather in relation to the goods or services for which registration is sought, that is, by asking whether, when the mark is seen on or in relation to the goods or

services, it immediately conveys information about their nature. See In re Abcor Development Corp., *supra*; In re Consolidated Cigar Co., 35 USPQ2d 1290 (TTAB 1995); In re Pennzoil Products Co., 20 USPQ2d 1753 (TTAB 1991); and In re American Greetings Corp., 226 USPQ 365 (TTAB 1985).

Applicant, arguing that the test to be applied "ought to be that of first impression on the normal consumer," maintains that the term "ExpoDisplays" does not immediately and directly convey an unequivocal idea of applicant's involved goods, and that the mark consists of two "not uncommon words" which form their own identity.[4] (Applicant's brief, p. 5).

As noted above, the test is not whether a consumer can guess what the goods are from the mark, but rather whether, when the consumer sees the mark on or in connection with the goods, it immediately conveys information about them. In view of the evidence made of record by the Examining Attorney, we have no doubt that when consumers see applicant's portable modular displays for use in exhibitions and trade shows bearing the mark EXPODISPLAYS

[4] We note that applicant included with its reply brief photocopies of three registrations, which allegedly evidence that the term "ExpoDisplays" is not a common term used to identify the involved goods. This evidence is untimely and will not be considered by the Board. See Trademark Rule 2.142(d), and TBMP §1207.01.

(in stylized form), the mark would immediately inform prospective purchasers that applicant's portable displays are intended for use in exhibitions, trade shows, and expositions. The ordinary, commonly understood meanings of the words "expo" and "displays" in the context of applicant's goods immediately convey information about the nature, function, purpose and use of applicant's goods. Further, applicant, in the identification of goods, describes its goods as "portable modular *displays* for use in *exhibitions* and *trade shows*."

Applicant's mark is not incongruous, creates no double meaning, requires no imagination or thought as to meaning, and does not create a commercial impression or meaning which relates to anything other than displays for exhibitions and trade shows. Accordingly, in the context of applicant's goods, the mark merely describes the goods.

We turn next to the refusal to register under Section 2(d) of the Trademark Act. Considering first the goods, applicant's specified goods are "portable modular displays for use in exhibitions and trade shows" and registrant's are "portable, plug-together and collapsible exhibition, display and decorative systems...." Applicant does not dispute either the fact that the respective goods are essentially identical, or the fact that they are sold in

essentially the same channels of trade to the same or similar purchasers.

Rather, applicant contends that the "purchasers are sophisticated enough not to be confused and that the expense and size of the products along with purchaser sophistication is sufficient to avoid any likelihood of confusion." (Applicant's reply brief, p. 2).

Even if the prospective purchasers of the involved goods are sophisticated, and the goods are expensive, as argued by applicant, this does not mean that the purchasers are immune from confusion as to the source of the portable modular displays offered by applicant and those offered by the cited registrant. See Peopleware Systems, Inc. v. Peopleware, Inc., 226 USPQ 320 (TTAB 1985); and In re Pellerin Milnor Corporation, 221 USPQ 558 (TTAB 1983).

As to the marks, applicant argues that the word SERVICE appearing in the cited registrant's mark is sufficient to distinguish the two marks "so as to avoid any likelihood of confusion" because it is a misnomer as applied to goods, and therefore it "does stick in the memory of a prospective purchaser." (Applicant's brief, p. 3). The Examining Attorney argues that the respective marks are very similar in appearance, sound, connotation and commercial impression; and that the cited registrant's

mark is not limited to any particular form and, thus, could be presented in any format, including one making the term "SERVICE" subordinate to the words "EXPO DISPLAY" (e.g., SERVICE could appear in smaller type and/or beneath the words EXPO DISPLAY).

Regarding the marks, we begin with the premise that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." See Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). In this case, both applicant's mark, and registrant's mark include the nearly identical wording, EXPO DISPLAY or EXPODISPLAYS. It is true that the registration includes a disclaimer of the terms EXPO DISPLAY, and that we have held herein that applicant's mark is merely descriptive. Nonetheless, the additional term SERVICE in the registrant's mark is not sufficient to create a significantly different connotation or commercial impression. A purchaser familiar with registrant's goods sold under the registered mark might, upon seeing applicant's mark on essentially identical goods, reasonably assume that applicant's goods came from the same source as registrant's goods.

Moreover, the differences in the marks may not be recalled by purchasers seeing the marks at separate times. The emphasis in determining likelihood of confusion is not on a side-by-side comparison of the marks, but rather is on the recollection of the average purchaser, who normally retains a general, rather than a specific, impression of the many trademarks encountered; that is, the purchaser's fallibility of memory over a period of time must also be kept in mind. See Grandpa Pidgeon's of Missouri, Inc. v. Borgsmiller, 477 F.2d 586, 177 USPQ 573 (CCPA 1973); In re Mucky Duck Mustard Co., Inc., 6 USPQ2d 1467 (TTAB 1988); and Edison Brothers Stores v. Brutting E.B. Sport-International, 230 USPQ 530 (TTAB 1986).

Customers who encounter registrant's EXPO DISPLAY SERVICE on portable plug-together and collapsible exhibition display and decorative systems, and then encounter applicant's stylized EXPODISPLAYS on portable modular displays, or vice versa, would be likely to believe that it is the same mark, or, if they remember the difference in the marks, to assume that the marks are slight variations of one another used by a single source. Thus, we find that the marks are substantially similar. See In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Accordingly, if applicant's mark

for portable modular displays for use in exhibitions and trade shows were to be used contemporaneously with registrant's mark for portable, plug-together and collapsible exhibition, display and decorative systems, source confusion would be likely to occur.

Decision: The refusal to register is affirmed on both grounds.

R. F. Cissel

G. D. Hohein

B. A. Chapman
Administrative Trademark
Judges, Trademark Trial and
Appeal Board